



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 23, 1996

Ms. Tamara Armstrong
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR96-0596

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38695.

Travis County (the "county") received a request for a copy of records relating to a specified individual, two specified cause numbers, and related prosecution and probation records. You have submitted a copy of the information that you believe is responsive to the request and contend that this information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code.

First, you claim that certain information is excepted from disclosure under section 552.101 of the Government Code. This section excepts information that is considered to be "confidential by law, either constitutional, statutory, or by judicial decision." Federal statutes and regulations prohibit the release to the general public of criminal history record information ("CHRI") maintained in state and local CHRI systems. *See* 42 U.S.C.A. 3789g(b); 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 of the Government Code provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084.

Therefore, the county must withhold any CHRI obtained from the DPS and from the Texas Crime Information Center or the National Crime Information Center under section 552.101 of the Government Code. Please note, however, that driving record information is not confidential under chapter 411, *see id.* § 411.082(2)(B), and must be disclosed.

You contend that certain documents, such as a police offense report that is the subject of one of the requested cause numbers, are excepted as CHRI under common law privacy. In *United States Department of Justice v. Reporters Committee For Freedom of the Press*, 489 U.S. 749 (1989), the U.S. Supreme Court concluded that where an individual's CHRI is compiled or summarized by a governmental entity, the information takes on a character that implicates individual's right of privacy in a manner that the same individual records in an uncompiled state do not. The offense report at issue does not include any prior CHRI but merely indicates that the individual was arrested in connection with an alleged offense that is the subject of the report. Such an offense report that is the subject of a specific request for information does not constitute CHRI and may not be withheld under section 552.101.

We next address your contention that section 552.111 in conjunction with the attorney work-product doctrine excepts all of the requested information from disclosure. In the past, this office has concluded that in the context of the Open Records Act the work-product doctrine applies only upon a showing that section 552.103(a) applies. *See* Open Records Decision No. 575 (1990). However, the issues you raise with respect to attorney work product are the subject of pending litigation which is now on appeal to the Texas Supreme Court. *See Holmes v. Morales*, 906 S.W.2d 570 (Tex. App.--Austin 1995, writ granted). In light of the pendency of this litigation, ruling on your claims regarding work product would be inappropriate for this office. At this point, the outcome of the *Holmes* case may resolve your claims and may moot any decision this office might reach on those claims. For these reasons, we decline to rule on the issues you raise regarding attorney work product, and you may withhold the requested information pending the outcome of the *Holmes* case.

We also remind you that even if section 552.103 or section 552.111 excepts attorney work product from required public disclosure under the Open Records Act, both exceptions are discretionary. *See* Gov't Code § 552.007; Open Records Decision Nos. 542 (1990) at 4, 464 (1987) at 5. Section 552.007 provides as follows:

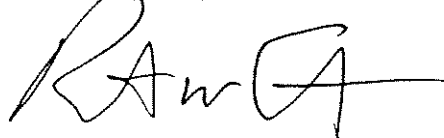
- (a) This chapter does not prohibit a governmental body or its officer for public information from voluntarily making part or all of its information available to the public, unless the disclosure is expressly prohibited by law or the information is confidential under law.

(b) *Public information* made available under Subsection (a) must be made available to any person. [Emphasis added.]

The county attorney may, therefore, choose to release to the public some or all of the requested records that may be work product.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'RWS', followed by a horizontal line extending to the right.

Robert W. Schmidt
Assistant Attorney General
Open Records Division

RWS/rho

Ref.: ID# 39013

Enclosures: Submitted documents

cc: Mr. Josh Bernstein
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(w/o enclosures)